

Brenda M. Bradley, OSB #060453
brenda.bradley@lasoregon.org
Legal Aid Services of Oregon
230 N.E. 2nd Avenue, Suite A
Hillsboro, OR 97124
Telephone: (503) 648-7163
Facsimile: (503) 648-0513

D. Michael Dale, OSB #771507
michaeldale@dmichaeldale.net
Law Office of D. Michael Dale
P.O. Box 1032
Cornelius, OR 97113
Telephone: (503) 730-1706
Facsimile: (503) 946-3089

Corinna Spencer-Scheurich, OSB #130147
corinna@nwjp.org
Northwest Workers' Justice Project
812 S.W. Washington Street, Suite 225
Portland, OR 97205
Telephone: (503) 525-8454
Facsimile: (503) 946-3029

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

FLORENTINO MARTINEZ, an individual,

Plaintiff,

v.

RG'Z FORESTRY, LLC, a domestic limited
liability company,

Defendant.

Civil No.:

COMPLAINT

Fair Labor Standards Act
(29 U.S.C. §§ 201 *et seq.*),
Migrant and Seasonal Agricultural
Worker Protection Act (29 U.S.C.
1801 *et seq.*),
Oregon Wage and Hour Laws,
Oregon Contractor Registration
Act (ORS 658.405, *et seq.*)

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. Florentino Martinez (Plaintiff) brings this action against RG’Z Forestry, LLC (Defendant), under the Fair Labor Standards Act (29 U.S.C. §§ 201 *et seq.*, “FLSA”) to collect unpaid wages. Plaintiff seeks overtime and minimum wages due to him under 29 U.S.C. §§ 206, 207, and 216(b), and liquidated damages for the failure to pay wages under 29 U.S.C. § 216(b).

2. Plaintiff alleges violations of the Migrant and Seasonal Worker Protection Act (29 U.S.C. 1801 *et seq.*, “AWPA”). Plaintiff seeks liquidated and actual damages under 29 U.S.C. §1854.

3. Plaintiff also alleges unpaid wages, overtime violations, and penalty damages under Oregon wage and hour laws ORS 652.200, ORS 653.025, ORS 653.261, and ORS 653.055.

4. Plaintiff alleges violations of the Oregon Contractor Registrations Act (ORS 658.405 - 658.511, “OCRA”). Plaintiff seeks penalty damages under ORS 658.410, ORS 658.440, ORS 658.453, ORS 658.465, and ORS 658.475.

II. JURISDICTION

5. Jurisdiction is conferred on this Court by 29 U.S.C. § 216(b), as this action arises under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*; 29 U.S.C. § 1854, as this action arises under the Migrant and Seasonal Worker Protection Act, 29 U.S.C. §1801, *et seq.*, 28 U.S.C. § 1331, as this action arises under the laws of the United States, and 28 U.S.C. § 1337, as it arises under acts of Congress regulating commerce.

6. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction of the claims based on Oregon law, as they are so related to claims within the Court’s original

jurisdiction, that they form part of the same case or controversy under Article III of the United States Constitution.

III. PARTIES

7. Plaintiff Florentino Martinez is a natural person who was employed to perform labor for RG'Z Forestry, LLC.

8. Plaintiff, at all times relevant to this action, was a migrant agricultural worker within the meaning of the AWP, 29 U.S.C. §1802(10).

9. Defendant RG'Z Forestry, LLC, is a forestry contractor with its principal place of business in Medford, Oregon, in Jackson County. Defendant RG'Z Forestry is a limited liability company registered with the Oregon Secretary of State.

10. Defendant is a farm labor contractor under the AWP and OCRA.

IV. FACTS

11. RG'Z Forestry provides reforestation contracting services in Oregon and surrounding states.

12. Defendant recruited Plaintiff in Oregon to perform reforestation work in California from approximately August 7, 2017 to August 24, 2017, under a contract with the U.S. Forest Service.

13. During each workweek during the course of Plaintiff's employment at RG'Z Forestry, Plaintiff was employed by Defendant to perform reforestation services, which affected interstate commerce.

14. Plaintiff worked approximately 150.75 hours for Defendant between August 7, 2017, and August 24, 2017.

15. Defendant contracted with Plaintiff to pay Plaintiff an hourly wage of \$19.10 for

reforestation services during the period of August 7, 2017, through August 24, 2017.

16. Plaintiff was not paid for at least 46.75 hours of work performed between approximately August 7, 2017, and August 24, 2017.

17. Defendant regularly failed to compensate Plaintiff at a rate of time and one-half for every hour worked over 40 in each workweek.

18. Among other weeks, Defendant failed to pay Plaintiff for all hours worked over forty during the workweeks of August 7, 2017, through August 13, 2017, and August 14, 2017, through August 20, 2017.

19. Defendant regularly failed to pay Plaintiff for all compensable travel time to individual jobsites.

20. Among other weeks, Defendant failed to pay Plaintiff for all compensable travel time to individual jobsites the week of August 7, 2017, through August 13, 2017.

21. Defendant did not furnish Plaintiff with a written disclosure explaining all of the terms and conditions of employment at the time of recruitment.

22. Defendant did not post in a conspicuous place at the place of employment a poster containing information concerning the rights of workers.

23. Defendant did not comply with all field sanitation requirements.

24. Defendant discharged Plaintiff for discussing his OCRA rights with other workers.

25. Plaintiff, through his attorney, sent Defendant a letter on March 21, 2019, complaining of the violations of state and federal wage and hour law and requesting payment of the wages Plaintiff is due.

26. To date, Defendant has failed to pay Plaintiff all of his wages.

V. CLAIMS FOR RELIEF

(First Claim—Violation of FLSA)

1. Defendant violated 29 U.S.C. § 207 when it failed to pay Plaintiff overtime premium wages for work performed for Defendant in excess of forty hours per work week.
2. Defendant violated 29 U.S.C. § 206 when it failed to pay Plaintiff the minimum wage for all compensable travel time.
3. Defendant's nonpayment of minimum wage and overtime wages was willful.
4. Pursuant to 29 U.S.C. § 216(b), Plaintiff is entitled to recover minimum wage and overtime wages, equal amounts as liquidated damages, and attorneys' fees and costs.

(Second Claim—Violation of AWP)

5. Defendant violated AWP by failing to pay Plaintiff all of his wages when due pursuant to 29 U.S.C § 1822(a).
6. Defendant violated AWP by failing to pay him the promised wage in violation of 29 U.S.C. § 1822(c).
7. Defendant violated AWP by failing to ascertain and disclose in writing to Plaintiff all terms and conditions of employment as required under 29 U.S.C. § 1821(a).
8. Defendant violated AWP by failing to post in a conspicuous place at the place of employment a poster containing information concerning the rights of workers as required by 29 U.S.C. 1821(b).
9. Plaintiff seeks actual damages or statutory damages of \$500.00, whichever is higher, for each of Defendant's violations of AWP pursuant to 29 U.S.C. §1854, together with his court costs.

(Third Claim—Violation of Oregon Overtime Laws)

10. Defendant failed to pay Plaintiff at a rate of time and one-half for overtime hours

in violation of ORS 653.261 and its implementing regulations.

11. Defendant failed to pay Plaintiff at the Oregon minimum hourly rate for all compensable travel time and other time worked in violation of ORS 653.025.

12. Plaintiff is entitled, under ORS 653.055, to recover the unpaid wages, penalty damages in an amount equal to 240 times his hourly wage rate, and reasonable attorneys' fees and costs for non-payment of minimum and overtime wages.

(Fourth Claim—Violation of OCRA)

13. Defendant failed to pay Plaintiff all wages owed in violation of ORS 658.440(1)(c).

14. Defendant failed to pay Plaintiff all wages owed in violation of all terms of contract entered into as a farm labor contractor in violation of ORS 658.440(1)(d).

15. Defendant failed to furnish Plaintiff with a written disclosure explaining the terms and conditions of employment at the time of recruitment or solicitation to work in violation of ORS 658.440(1)(f).

16. Defendant failed to execute a written agreement with Plaintiff at the time of hire and prior to Plaintiff performing work in violation of ORS 658.440(1)(g).

17. Defendant failed to substantially comply with all field sanitation requirements provided for in ORS 654.174, in violation of ORS 658.440(2)(a).

18. Plaintiff is entitled to actual damages or \$1000.00 statutory damages, whichever is greater under ORS 658.440(1) and (2).

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

1. Award Plaintiff his unpaid overtime wages pursuant to 29 U.S.C. § 207 and

liquidated damages pursuant to 29 U.S.C. § 216 (b);

2. Award Plaintiff his unpaid overtime wages pursuant to Oregon overtime law, ORS 653.261;

3. Award Plaintiff penalty wages in the amount of 240 times Plaintiff's average hourly wage pursuant to ORS 653.055, for unpaid overtime wages;

4. Award Plaintiff actual or statutory damages of \$500.00 for each of Defendant's violations of AWPAs pursuant to 29 U.S.C. § 1854;

5. Award Plaintiff actual damages or \$1000.00 statutory damages, whichever is greater under ORS 658.440(1) - (2) for each violation of OCRA;

6. Find that Plaintiff is the prevailing party and award Plaintiff reasonable attorneys' fees and costs under 29 U.S.C. § 216(b) and ORS 653.055 and ORS 652.200;

7. Award Plaintiff pre-judgment interest on sums due under state law claims and post-judgment interest; and

8. Award such other relief as this Court deems just and proper.

VII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as allowed under FRCP 38.

Dated: July 19, 2019.

LEGAL AID SERVICES OF OREGON

s/Brenda M. Bradley
Brenda M. Bradley, OSB No. 060453
brenda.bradley@lasoregon.org
Tel.: (503) 648-7163
Of Attorneys for Plaintiff